

ARIZONA TAX COURT

TX 2005-050117

07/07/2006

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT

S. Brown

Deputy

FILED: 07/13/2006

LUXURY SUITES INC

STEPHEN C NEWMARK

v.

CITY OF SCOTTSDALE

SHERRY R SCOTT

MINUTE ENTRY

The Court has considered Scottsdale Luxury Suites' Motion for Summary Judgment and the City of Scottsdale's Motion for Summary Judgment and the briefs.

The facts in this case are not in dispute, and the issue is solely one of law, suitable for summary judgment. Plaintiff, an internet marketer, arranges with various hotels in Scottsdale to market rooms to customers visiting its web site. Upon receiving a booking, Plaintiff informs the hotel, pays it a discounted rate for the room, and collects the full rate from the customer. Defendant Scottsdale assessed transaction privilege tax on Plaintiff's business revenues, finding Plaintiff to be a "broker" of hotel lodging. Plaintiff paid the tax, then filed a request for Refund, which was denied by the city and by the Municipal Tax Hearing Officer. Plaintiff appealed.

The Court concludes that Plaintiff's definition of "broker" is too limited. In a very real sense, Plaintiff does "collect income for the hotels." By Plaintiff's own characterization, *see* Deposition of Mark LeVally at 12-15, the hotels agree to rent Plaintiff rooms at a reduced rate in the expectation that Plaintiff will use its marketing ability to put guests into rooms that would otherwise go unoccupied if they had to find customers themselves. Plaintiff thus brings seller and buyers together, collecting as its profit the difference between the discounted price it receives from the hotel and the full price it receives from the guests. This is an example of a broker's activity. *See* BLACK'S LAW DICTIONARY 193 (6th ed. 1990) "Broker." This activity can be distinguished from the real estate trading scenario proposed by Plaintiff. Plaintiff is not purchasing blocks of rooms on spec, in hopes that its web marketing will fill them but with no guarantee of recovering the money already paid to the hotel; rather, Plaintiff pays the hotel its reduced rate only when the customer books and completion of the transaction is assured.

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Plaintiff's reliance on Private Taxpayer Ruling LR02-015 is misplaced. That ruling is based on state law, not the applicable Scottsdale ordinance. Because the Arizona tax code does not levy a tax on brokers, the ruling does not and did not need to address whether Plaintiff is a broker. Nothing in state law bars Scottsdale from imposing a tax on broker services, even though the state chooses not to do so.

Therefore, IT IS ORDERED:

1. Plaintiff Luxury Suites, Inc.'s Motion for Summary Judgment is denied.
2. Defendant City of Scottsdale's Motion for Summary Judgment is granted.
3. Plaintiff's Motion to Set and Certificate of Readiness and Request for Scheduling Conference are denied as moot in light of the Court's ruling on the parties' respective Motions for Summary Judgment.